

ADMINISTRATIVE PROCEDURES FOR ELECTRONIC CASE FILINGS

REDLINE COMPARISON REFLECTING CHANGES – November 2012

Cover Page

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1.7.2 A PDF scanned document is a document converted to PDF by means of a document scanner. When scanning documents to be subsequently filed electronically, filing parties must configure their scanners at 300 ppi or higher. The filing party is responsible for the legibility of the scanned image. Scanning a document to PDF creates a file larger than a PDF text document and does not allow for text searches within the document. Note: Do not use a scanner's OCR setting as this can alter the scanned document.

1.7.3 Avoid scanning when possible. Use the **Insert Pages** function of Adobe Acrobat to combine scanned and unscanned PDF files into a single PDF whenever possible; e.g., when only the last page of a document contains an ink signature.)

~~**3.1.2** Social Security transcripts. The administrative records in Social Security cases must be filed on CD-ROM, or other method approved by the clerk in advance, containing the records in PDF.~~

3.1.32 Pre-indictment grand jury matters that are assigned miscellaneous action numbers by the clerk, e.g., Notices of Disclosure of Grand Jury materials in criminal investigations; applications for wiretaps; pen registers, or trap and trace; beeper applications for mobile tracking devices; applications under 18 U.S.C. § 2703, requiring production of certain records and precluding notice; and applications for *ex parte* orders to disclose returns and return information; as well as warrants, must be filed in the traditional manner.

3.1.43 Civil cases commenced under seal pursuant to statute (e.g., *qui tam* matters under the Federal Civil False Claims Act; refer to 31 U.S.C. §§ 3729-32 for more information) or sealed pursuant to Order shall be filed in accordance with Section 12 of these Procedures.

3.1.54 State court records may be filed on CD-ROM, or other method **approved by the clerk in advance**, containing the records in PDF, if not filed electronically via CM/ECF.

3.1.65 In accordance with the Local Rules of Procedure, parties shall not file discovery. However, discovery materials to be used in support of any motion, e.g., a motion to compel or for summary judgment, shall be filed electronically with the court as an attachment to the motion.

3.1.6 Some pleadings and papers require that additional parties to an action be added to the CM/ECF database before the registered attorney can electronically file a document. The filing party must provide the Clerk's Office with the case number and the complete name of the additional party as it will appear on the document to be filed at the following e-mail address:

WVSDdb_ecf@wvsd.uscourts.gov

Examples of pleadings that may add parties include:

Motion to Intervene

Motion to File Amicus Curiae Brief

Amended Complaints

Third Party Complaints

Answer by Underinsured Motorist

The Clerk's Office will notify the registered attorney via e-mail when the new party has been added to the CM/ECF database so that the document may be electronically filed in the appropriate case.

3.2.1 The charging document in a criminal case, such as the complaint, indictment, ~~and~~ or information.

5. Social Security Cases

A plaintiff shall file a complaint to initiate an action to seek review of a final decision of the Commissioner pursuant to 42 U.S.C. § 405(g) by completing and filing the form "Complaint for Review of the Decision of the Commissioner of Social Security" posted on this court's web site at www.wvsd.uscourts.gov.

In Social Security cases, Internet access to the complete file, including the administrative transcript, is available to counsel of record. Any other person may have electronic access to the full record at the public terminal in the Clerk's Office. Remote access by anyone other than counsel of record is limited to the docket sheet, any opinion, order, judgment or other disposition of the court, or any report and recommendation classified by the court as an opinion for the purposes of the E-Government Act of 2002, or that is adopted by an order that is classified as an opinion.

Absent a showing of good cause, all documents, notices, Consents to Proceed before the United States Magistrate Judge, briefs, administrative records –and orders in Social Security reviews filed in the District Court shall be filed and noticed electronically. ~~except as noted below:~~ The administrative record in Social Security cases must be filed in PDF by counsel using the event, Social Security Transcript or Social Security Transcript – Supplemental. However, counsel for the defendant must provide a paper copy of the Social Security transcript to the United States Magistrate Judge to whom the case is assigned or referred and to counsel for plaintiff.

~~5.1 The certified copy of the administrative record is exempt from the court's civil case redaction requirements. As stated in Section 3.1.2 of these Procedures, the administrative records in Social Security cases must be filed on CD-ROM, or other method, **approved by the clerk in advance**, containing the records in PDF. However, counsel for the defendant must provide a paper copy of the Social Security transcript to the United States Magistrate Judge to whom the case is assigned or referred and to counsel for the plaintiff.~~

~~5.2 All other documents in a Social Security case, including Consents to Proceed before the United States Magistrate Judge and briefs, will be filed and served electronically unless the court otherwise orders.~~

6.1.4 The court will issue logins and passwords only to attorneys in good standing. To be in good standing, an attorney must meet the requirements within the Local Rules governing admission. The Court shall disable a registered attorney's login and password if the registered attorney fails to maintain active status as a member of the Bar of the Court or is suspended for disciplinary reasons.

6.1.5 In the event that a registered attorney has forgotten a password, then the attorney must contact the Clerk's Office to request that the account be reset. The Clerk's Office will send the attorney an e-mail message with the new login and password by e-mail only to the registered attorney.

6.2.1 Attorney Registration Form: To file electronically, each attorney must complete and sign an Attorney Registration Form for Electronic Filing. An attorney's full name on the Attorney Registration Form should correspond to the name in which an attorney is admitted to a state bar. Example: State Bar admitted name "Anthony Doe" should not be registered as "Tony Doe." The form is available on the court's web site at www.wvsc.uscourts.gov.

6.2.2 Attorneys may fax a copy of the Attorney Registration Form to 304/347-3007, but must mail the original Attorney Registration Form to the Clerk, U.S. District Court, at Post Office Box 2546, Charleston, WV 25329, or deliver the form to the public counter at the Clerk's Office at the Robert C. Byrd United States Courthouse, Suite 2400, 300 Virginia Street, East, Charleston, WV 25301.

6.2.4 After registering, attorneys must change their passwords once received. Logins, however, can only be changed by the Clerk's Office. If an attorney believes that the security of an existing password has been compromised and that a threat to CM/ECF exists, the attorney must change his or her password immediately. Instructions are posted on the court's web site. In addition, the attorney shall immediately notify the clerk by telephone of the suspected compromise to the password.

6.2.5	<p>An attorney whose e-mail address, mailing address, telephone or fax number has changed from that of the original Attorney Registration Form shall timely file with the clerk a Notice of Change of Attorney Information form available on the court's web site at www.wvsc.uscourts.gov in all cases affected by the attorney's move. <u>If the attorney has no pending cases, s/he may file the Notice of Change of Attorney Information form with the Clerk's Office.</u></p>
7.1	<p>General</p> <p>Electronic transmission of a PDF document to CM/ECF in accordance with these Administrative Procedures, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Local Rules of this court and constitutes the entry of the document on the docket kept by the Clerk's Office under Rules 58 and 79 of the Federal Rules of Civil Procedure and Rules 32, 49 and 55 of the Federal Rules of Criminal Procedure. E-mailing <u>or faxing</u> a document to the Clerk's Office shall not constitute "filing" of the document.</p>
8.2	<p>Original Complaint</p> <p>When filing an original complaint, the filing user will select the event "Complaint with Civil Cover Sheet <u>Attached</u>" from the CV- <u>Complaints and Other</u> Case Initiating Documents category. Documents to be filed as attachments to the complaint and civil cover sheet include the proposed summons form(s) and, where appropriate, a motion, affidavit and proposed order allowing the plaintiff to proceed without prepayment of fees.</p>
8.3	<p>Notice of Removal</p> <p>When filing a notice of removal, the filing user will select the event "Notice of Removal <u>with Civil Cover Sheet Attached</u>" from the CV - <u>Complaints and Other</u> Case Initiating Documents category. Documents to be attached to the notice of removal include the civil cover sheet, all state court papers, the state court docket sheet, and, when appropriate, the answer to the complaint. If the removing party seeks to proceed without prepayment of fees, attachments should also include a motion, affidavit and proposed order allowing the plaintiff to proceed without prepayment of fees.</p>
9.2	<p>Submission of the Civil Summons <u>in a Civil Case</u></p>
9.2.1	<p>The party requesting the summons must prepare the summons form <u>for each defendant</u>; including <u>Each summons shall include</u> the full style of the case from the complaint or petition. on the summons.</p>
9.2.2	<p><u>The party may: (1) attach the proposed summons as an attachment to the complaint when filing a new civil action in the shell case established by this District to open new cases; or (2) using the proper Summons Submitted (Proposed) event in ECF after the case has been opened.</u></p>

9.2.23 ~~The Clerk's Office staff will sign and seal the summons, and return the summons to the party by United States mail. Filers may make alternate arrangements to retrieve the summonses at the public counter in the Clerk's Office.~~ The Court will issue a signed and sealed summons and return to the requesting party via ECF through an Notice of Electronic Filing. The requesting party will be responsible for making sufficient copies of the summons and complaint for service as provided in Fed. R. Civ. P. 4.

9.3 Service of Other Electronically Filed Documents

9.4 Certificate of Service

A certificate of service shall be made part of the main document in ECF unless it is the certificate of service for discovery documents or Rule 26 disclosures. The certificate of service for discovery documents is filed without the discovery document itself pursuant to L. R. Civ. P. 26.3. A certificate of service shall list all parties entitled to service or notice, and the manner in which service or notice was accomplished on each party. Sample language for both types of certificates of service are posted on the court's web site at www.wvsc.uscourts.gov.

9.5 Service on Parties Not Registered for ECF

Filers are required to serve copies of any electronically filed pleading, document, or proposed order on parties not registered for ECF in accordance with the Federal Rules of Civil and Criminal Procedure. An electronic filer can view the NEF under the "Notice has been delivered by other means to:" section to determine if there are any case participants who have not received copies via ECF noticing.

9.8 ~~Terminating and Reactivating Electronic Service~~ E-mail Notices to Attorneys

All attorneys of records who are e-filers will receive Notices of Electronic Filing. An attorney whose client(s) has/have been terminated from the case will continue to receive Notices of Electronic Filing for that case unless the attorney informs the court that the attorney does not wish to receive further notice of additional case filings or activities, including the final judgment. ~~A user receiving electronic service in a case may notify the court that service should be terminated by filing a notice stating either (1) that an order for withdrawal for the user has been granted or (2) that the party the user represents is no longer pending in the case. Counsel may file a notice reactivating service with the court in those situations where service has been terminated.~~ An attorney may use the Notice of Change of Attorney Information form available on the court's web site at www.wvsc.uscourts.gov to terminate and reactivate electronic service.

Attorneys must comply with the requirements of Southern District of West Virginia L. R. Civ. P. 83.4 and L. R. Cr. P. 44.4 for Termination of Representation. An attorney who has withdrawn from a case pursuant to those requirements will no longer receive Notices of Electronic Filing in that case.

9.9 E-mails with Notices of Electronic Filing Returned to the Court

In the event that an e-mail containing the Notice of Electronic Filing is returned to the Court as undelivered, the Clerk's Office will resend the e-mail only to those ECF filers who are primary participants in the case. The Clerk's Office does not monitor and will not resend bounced back e-mails to those persons who are registered as secondary recipients in the case.

10.2 Filing a Memorandum or Brief ~~in Support of or Opposition to a Motion~~

A memorandum or brief ~~in support of or in opposition to a motion~~ shall **not** be filed as an attachment to the motion. **The memorandum or brief ~~in support~~ shall be a stand-alone document electronically filed as a "Memorandum in Support" or "Brief in Support" or "Memorandum in Opposition~~to~~" or "Brief in Opposition~~to~~."**

11.1 Proposed Amended Pleadings

When leave of court is sought for the filing of an amended pleading or document, such as an amended complaint or a reply brief, the proposed amended document must be electronically filed as an attachment to the motion. If the amended complaint does not accompany the motion, counsel must contact the Clerk's Office to arrange for the filing of the amended complaint after entry of an order granting the motion.

11.2 Proposed Jury Instructions, Proposed Jury Verdicts~~-Forms~~, Proposed Special Interrogatories to the Jury and Proposed Voir Dire Questions

Proposed jury instructions, proposed jury verdicts~~-forms~~, proposed special interrogatories to the jury and proposed voir dire questions shall be electronically filed via CM/ECF. Upon request, the presiding judge may require the filing user to submit these documents in standard word processing software via e-mail or as otherwise directed.

11.3 Proposed Bill of Costs

The proposed bill of costs shall be filed electronically in ECF using the docket event "Bill of Costs - Proposed."

12.5.3 All documents filed in a sealed case must be served in paper format. The court's electronic ~~notice facilities~~ noticing will not be available for sealed documents. Although an NEF may provide notice of a docket entry, service of the sealed documents is not effected through ECF.

12.6.1 Motion to Seal - General

If a party wishes to file a sealed motion or a sealed document, the filing user ~~should~~ must file a motion to seal under the Restricted Access or Sealed Documents event category in CM/ECF, describe the motion, ~~and if there are attachments, indicate and describe those.~~ or the document to be sealed and add the sealed document as an attachment to the motion. The filing user should exercise caution when describing the sealed motion and any attachments as the docket ~~entry-text~~ is ~~public~~ PUBLIC even though the images of the motion to seal and any attachments are ~~not~~ SEALED until the court rules on the merits of the motion to seal. A Notice of Electronic Filing will be generated to all ECF-registered case participants upon filing of the motion to seal containing the description the filing user entered into the event, but the sealed document will not be available for viewing.

12.6.2 Response or Reply to Motion to Seal

If a filing user files a sealed response or reply to the motion to seal, s/he ~~shall select the~~ must file a motion to seal using the event, Motion to Seal, under the Restricted Access or Sealed Documents event category in CM/ECF, and attach the response or reply to the motion to seal. The docket ~~entry-text~~ is public, but the document will remain sealed until the court rules on the merits of the motion to seal. A Notice of Electronic Filing will be generated to all ECF-registered case participants, but the sealed document cannot be viewed electronically by anyone with a PACER subscription.

12.6.3 *Ex Parte* Sealed Motion or Motion to Seal *In Camera*

If a party wishes to file an *ex parte* sealed motion in a criminal case or submit documents for *in camera* review in a civil or criminal case, then the filing user should select an *Ex Parte* Sealed Motion or a Motion to Seal *In Camera* under the Restricted Access or Sealed events category in CM/ECF. The motion and any attachments will be sealed and remain *ex parte* until the court rules on the merits of the motion. A Notice of Electronic Filing will NOT be generated to ~~the-any~~ case participants, and there will be no public docket entry for this type of filing unless the court would direct otherwise. When required by law, the court will provide public notice of the sealing request.

12.6.6 Motion to Seal Granted

Upon entry of an order that grants a motion to file documents under seal, the Clerk's Office will, unless directed otherwise, file, under seal, the proposed documents accompanying the motion as of the date the order was entered. If proposed documents did not accompany the motion, the Clerk's Office will contact the presiding judge or the filing party for the subject documents.

12.6.7 Motion to Seal Denied

Motions to seal and any accompanying proposed documents for sealing are considered lodged with the court pending a ruling on the sealing request. Upon entry of an order denying a motion to seal, the Clerk's Office will, if so directed, file the proposed documents accompanying the motion as of the date the order was entered; otherwise, the motion and accompanying proposed documents will remain lodged with the court and unavailable for public viewing.

15.1 Attorney Signatures

The attorney's login and password shall constitute that attorney's signature on all electronically filed documents for purposes of the Local and Federal Rules of Civil and Criminal Procedure, including but not limited to Rule 11 of the Federal Rules of Civil Procedure. A pleading or other document requiring an attorney's signature may be scanned, or may be electronically signed in the following manner: "s/(attorney name)." An attorney's signature name should correspond to the name in which an attorney is admitted to a state bar. Example: If the State Bar admitted name is "Judith Attorney," the signature name should not be "Judy Attorney." The correct format for an attorney signature is as follows:

s/ Judith Attorney

[State] Bar Number: 12345

Attorney for (Party Names(s))

ABC Law Firm

123 South Street

Charleston, WV 25301

Telephone: (304) 123-4567

Fax: (304) 123-6789

E-mail: judith_attorney@law.com

18.4 ~~Entries~~ Docket text made electronically by a filing user and entered on the docket will not be deleted. The Clerk's Office may edit or modify an entry, or delete and/or reattach correct images

20.1.2 Exemptions from the Redaction Requirement.

20.1.3 Privacy Recommendations.

20.1.4 Limitations on Remote Access to Electronic Files; Social Security Appeals and Immigration Cases.

20.1.5 Filings Made Under Seal.

20.1.6 Protective Orders.

20.1.7 Option for Additional Unredacted Filing Under Seal.

20.1.8 Option for Filing a Reference List.
20.1.9 Waiver of Protection of Identifiers.
20.1.10 Privacy - Judicial Conference Policy